



FEDERAL RESERVE SYSTEM

12 CFR Part 210

[Regulation J; Docket No. R-1434]

RIN No. 7100 AD 84

Collection Of Checks and Other Items By Federal Reserve Banks and Funds Transfers Through Fedwire: Elimination of “As-of Adjustments” and Other Clarifications

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation J (Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers through Fedwire). The final rule eliminates references to “as-of adjustments” consistent with the Board’s final amendments to Regulation D to simplify reserves administration; clarifies that an institution’s Administrative Reserve Bank is deemed to have accepted deposit of a check or other item even if the institution sends the item directly to another Federal Reserve Bank; further clarifies that Regulation J continues to apply to a Fedwire funds transfer even if the funds transfer also meets the definition of “remittance transfer” under the

Electronic Fund Transfer Act; and makes other conforming revisions.

DATES: This final rule is effective July 12, 2012.

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SUPPLEMENTARY INFORMATION

I. Background

Subpart A of Regulation J governs the collection of checks and other items by the Federal Reserve Banks (Reserve Banks), including the types of checks or other items that may be sent to Reserve Banks, the order in which they are deemed to be handled, and the related warranties and indemnities. Subpart B of Regulation J sets forth the terms and conditions under which Reserve Banks receive and deliver payment orders from and to depository institutions over the Reserve Banks' Fedwire® Funds Service (Fedwire).

On October 18, 2011, the Board proposed amendments to Regulation J, including the elimination of references throughout Regulation J to a Reserve Bank's use of "as-of adjustments" (76 FR 64259). The Board proposed these amendments, in part, to conform to proposed amendments to Regulation D (12 CFR part 204) to simplify reserves

administration.¹ The Board also proposed amendments to subpart A of Regulation J to clarify where a check or other item is deemed to be accepted when it is sent to a Reserve Bank. Specifically, the proposal clarified that when an institution sends a check or other item for collection to a Reserve Bank, the institution's Administrative Reserve Bank is deemed to have accepted deposit of the item even if the item was sent directly to another Reserve Bank. In addition, the Board proposed amendments to clarify that subpart B of Regulation J continues to apply to a Fedwire funds transfer even if that funds transfer also meets the definition of "remittance transfer" under the recently revised Electronic Fund Transfer Act ("EFTA"). After consideration of the comments received, the Board is adopting the amendments to Regulation J as proposed.

II. Request for Public Comment and Summary of Comments Received

The Board requested public comment on its October 2011 proposal to amend Regulation J. The Board received a total of eight comments from six financial institution trade associations, one depository institution, and one association of depository institutions. Commenters generally expressed support for the proposed amendments, although some were concerned with various aspects of the proposal and provided support contingent on certain conditions. These comments are discussed in more detail below.

III. Analysis of Proposed Simplifications and Comments

Eliminate References to As-of Adjustments

¹ The proposed amendments to Regulation D were published in the Federal Register on October 18, 2011 (76 FR 64250). The Board proposed to discontinue the use of as-of adjustments for deposit report revisions and to replace all other as-of adjustments with direct compensation, create a common two-week maintenance period for all depository institutions, create a penalty-free band around reserve balance requirements in place of carryover and routine waivers, and eliminate the contractual clearing balance program.

Regulation J defines “as-of adjustment” for purposes of subpart B of the regulation as “a debit or credit, for reserve- or clearing-balance maintenance purposes only, applied to the reserve or clearing balance of a bank that either sends a payment order to a Federal Reserve Bank, or that receives a payment order from a Federal Reserve Bank, in lieu of an interest charge or payment.”² Regulation J currently permits a Reserve Bank to use either an as-of adjustment or direct compensation (at the federal funds rate) to compensate for an error in transaction processing or other damages owed in connection with a Fedwire funds transfer. Regulation J further provides in subpart A that a Reserve Bank’s operating circulars may include procedures for paying interest in the form of as-of adjustments in relation to the collection of checks and other items.

As noted above, the Board proposed to amend Regulation D to simplify the rules governing the administration of reserve requirements. The proposed Regulation D amendments included discontinuing as-of adjustments related to deposit report revisions and replacing all other as-of adjustments with direct compensation in the form of either a debit or credit applied to an account to offset the effect of an error. Consistent with its Regulation D proposal, the Board proposed to amend Regulation J §§ 210.3(a), 210.26(b), and 210.32(b) (along with the corresponding commentary) to eliminate references to as-of adjustments. Under the Board’s Regulation J proposal, a Reserve Bank would continue to be able to pay direct compensation to a depository institution based on the federal funds rate in accordance with § 210.32(b), which incorporates by reference section 4A-506 of article 4A of the Uniform Commercial Code (UCC).³ The

² 12 CFR § 210.26(b).

³ Article 4A-506(b) states that if the amount of interest is not determined by an agreement or rule, the applicable federal funds rate would apply.

Board specifically requested comment on the following two items: whether use of the federal funds rate for the calculation of direct compensation is appropriate, and if not, the rate that the Board should use, and whether the Board should eliminate § 210.32(b)(1) of Regulation J entirely, as the Reserve Banks could simply pay direct compensation based on the provisions of UCC section 4A-506, which is already incorporated into Regulation J.

The Board received eight comments concerning the elimination of references to as-of adjustments. Commenters generally supported this amendment. One commenter requested that the debit or credit entry post directly to the account bearing the routing number of the original transaction and that the supporting documentation be forwarded directly to the depository institution holding that account. Two commenters conditioned their support of this change on Reserve Banks continuing to provide depository institutions with information on the error that occurred and the calculation of the compensation amount. With respect to compensation at the federal funds rate, one commenter stated that the federal funds rate should be used while another commenter stated that the rate for calculating the compensation amount should be at least equal to the federal funds rate. With respect to the elimination of § 210.32(b)(1), one commenter recommended that the Board eliminate this section entirely and allow the Reserve Banks to pay direct compensation based on the provisions of UCC section 4A-506, which is already incorporated into Regulation J.

The Board is adopting §§ 210.3(a), 210.26(b), and 210.32(b) as proposed (along with the corresponding commentary). These final amendments correspond to the Board's adoption of final amendments to Regulation D to discontinue as-of adjustments related to

deposit report revisions and to replace all other as-of adjustments with direct compensation. Under the final rules, the federal funds rate will be used for the calculation of direct compensation. The Board believes that the federal funds rate is the appropriate rate for direct compensation in order to ensure that a depository institution does not gain or lose in its position as a result of accounting or administrative errors or delays in transaction processing by Reserve Banks. The Board believes it is prudent to retain § 210.32(b)(1) to give appropriate context to the subsequent provision, § 210.32(b)(2), which concerns the pass-through of compensation to the appropriate party. Under § 210.32(b)(2), an institution that receives a compensation payment but is not the party entitled to compensation would continue to be required to pass the benefit of that payment through to the party entitled to compensation, computed as the value of the payment as if it had been passed through to the entitled party on the day the Reserve Bank effected payment to the institution. The Board anticipates that the Reserve Banks will make the appropriate information and documentation available to depository institutions as may be needed to permit institutions to reconcile accounts and allocate charges or payments. For example, information will be available that helps describe the calculation of direct compensation entries including the error amount, the start and end date of the error, and identification of the originating service area. The Board also anticipates that Reserve Banks will provide institutions with contact information for service areas processing direct compensation entries so that inquiries can be addressed.

Acceptance of Deposits of Items

Section 210.4 of Regulation J governs the sending and handling of checks and other items sent to Reserve Banks. The Reserve Banks have long permitted institutions

to send checks to a Reserve Bank other than the institution's Administrative Reserve Bank. These "direct sends" facilitate a more efficient check-collection process. Section 210.4 currently specifies the identity and order of the parties that are deemed to handle a check or other item, whether it is deposited electronically or in paper form, that is sent to a Reserve Bank for purposes of determining the rights and liabilities of the parties under Regulation J, Regulation CC (12 CFR part 229), and the UCC. Specifically, § 210.4 provides that, for an item sent to a Reserve Bank for collection, the following parties are deemed to have handled the item in the following order: (1) the initial sender; (2) the initial sender's Administrative Reserve Bank;⁴ (3) the Reserve Bank that receives the item from the initial sender (if different from the initial sender's Administrative Reserve Bank); and (4) another Reserve Bank, if any, that receives the item from a Reserve Bank.

The Board proposed to amend § 210.4(b)(1)(ii) to clarify that, when an Administrative Reserve Bank is deemed to have "handled" a check sent directly to another Reserve Bank, such "handling" of an item includes accepting the item for deposit. Thus, for purposes of determining the rights and liabilities of parties that send and handle checks and other items sent to a Reserve Bank, the Administrative Reserve Bank is deemed to have accepted deposit of the item from the initial sender even if the sender sends the item directly to another Reserve Bank. The Board further proposed to clarify in § 210.4(b)(3) that, in addition to Regulation J, Regulation CC, and the UCC, the identity and order of the parties in § 210.4(b) also determines the relationships and the

⁴ An institution's Administrative Reserve Bank is the Reserve Bank in whose District the institution is located. 12 CFR § 210.2(c), *see* section 204.3(g) of Regulation D, 12 CFR § 204.3(g) (location of depository institutions).

rights and liabilities of the parties for purposes of sections 13(1) and 16(13) of the Federal Reserve Act, which govern deposits to Reserve Banks.⁵

The Board received six comments supporting this clarification and no comments opposing the clarification. The Board is adopting this clarification as proposed.

Application of Regulation J to “Remittance Transfers”

As noted above, Fedwire funds transfers are governed by subpart B of Regulation J. More specifically, subpart B of Regulation J currently “governs a funds transfer that is sent through Fedwire . . . even though a portion of the funds transfer is governed by the Electronic Fund Transfer Act [EFTA], but the portion of such funds transfer that is governed by the [EFTA] is not governed by” Regulation J.⁶ This provision is slightly different from (and supersedes) the scope of UCC Article 4A-108, which provides that Article 4A does not apply “to a funds transfer, any part of which is governed by the [EFTA].” Prior to the adoption of the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the exclusion from Regulation J and Article 4A of transactions governed by the EFTA did not create any gaps or overlap because the EFTA excluded from the definition of “electronic fund transfer” wire transfers over systems that are not designed primarily for consumer transfers (such as Fedwire).⁷ The Dodd-Frank Act, however, added new section 919 to the EFTA, which defines “remittance transfer” to include an electronic transfer of funds requested by a U.S. consumer sender through a remittance transfer provider, whether or not the remittance transfer is also an electronic fund transfer as defined in the EFTA. Therefore,

⁵ 12 U.S.C. 342 and 360.

⁶ 12 CFR § 210.25(b)(3).

⁷ 15 U.S.C. 1693a(6)(B).

a Fedwire funds transfer could potentially be part of a remittance transfer under the new section 919 of the EFTA.⁸ Consequently, under Regulation J's current scope provision (§ 210.25(b)(3)), Fedwire funds transfers that meet the EFTA's definition of "remittance transfer" could be viewed as "governed by" the EFTA and therefore not governed by Regulation J.

To avoid a gap in coverage for Fedwire funds transfers, the Board proposed to amend § 210.25 of Regulation J to clarify that Regulation J continues to apply to "remittance transfers" as defined by the EFTA, to the extent there is not an inconsistency between Regulation J and section 919 of the EFTA (in which case section 919 would prevail). The proposed clarification was intended to ensure that the provisions of Regulation J, and therefore Article 4A of the UCC, apply to all Fedwire funds transfers, except to the extent that section 919 of the EFTA and rules established thereunder apply. The proposal included clarifications in the commentary to § 210.25 as well.

Commenters generally supported this clarification; however, three commenters requested that the Board coordinate with the Consumer Financial Protection Bureau (CFPB) before finalizing this rule due to outstanding issues regarding the "remittance transfer" final rule. Another commenter supported the proposal but pointed out that although this amendment will clarify the application of Regulation J for Fedwire transactions, the clarification will not apply to non-Fedwire wire transfers governed by Article 4A.

The Board is adopting the clarification to Regulation J as proposed. At the time the Board published the related proposal for this rulemaking, the CFPB had yet to finalize

⁸ See the Consumer Financial Protection Bureau's final amendments to Regulation E (12 CFR part 1005) to implement section 919 of the EFTA (77 FR 6194 (Feb. 7, 2012)).

amendments to Regulation E to implement section 919 of the EFTA. The CFPB has since finalized this rulemaking.⁹ The CFPB's final rule includes a discussion on the relationship between the EFTA and Article 4A of the UCC.¹⁰

Conforming Revisions

The Board is making non-substantive changes in §§ 210.2, 210.10, and 210.11 to conform terminology to the final amendments in Regulation D concerning the use of various reserve-related terms. Regulation J § 210.2(a) currently defines the term “account” as an account with reserve or clearing balances on the books of a Federal Reserve Bank. Consistent with the Regulation D final rulemaking, the Board is amending § 210.2(a) to refer simply to balances on the books of a Federal Reserve Bank. In addition, Regulation J §§ 210.10 and 210.11, which concern the availability of credit to depository institutions, currently refer to “reserve.” Section 210.11(a), for example, states that a Reserve Bank shall provide credit of a noncash item when it receives payment in actually and finally collected funds and that the amount of such noncash item “is counted as reserve for purposes” of Regulation D. Consistent with the final amendments to Regulation D, the Board is amending §§ 210.10(a) and 210.11(a), (b), and (c) by replacing the term “reserve” with “balance maintained to satisfy a reserve balance requirement.”

Effective Date

The Board proposed that the effective date for the elimination of references to as-of adjustments be the same as the effective date of the corresponding amendments to Regulation D (no earlier than the first quarter of 2012). The Board proposed an effective

⁹ 77 FR 6194 (February 7, 2012).

¹⁰ *Id.* at 6211-6212.

date of 30 days after adoption of the final rule for the other clarifications. The Board received three comments concerning the proposed effective dates. Two of these commenters requested that the effective date of the changes be staggered, with a delayed effective date for the first change of at least nine months. One of these commenters stated that the elimination of references to “as-of adjustments” be made in conjunction with the changes in Regulation D and made effective no earlier than the first quarter of 2013. This commenter also recommended that the two clarifications be made effective no earlier than the first quarter of 2013 because banks have already established their change management plans for 2012 and the clarifications will require additional changes to policies and procedures.

The Board is setting the effective date for the elimination of “as-of adjustments” and changes to reserve terminology as July 12, 2012. This is the same effective date as that which has been finalized for the corresponding amendments to Regulation D. The Board is setting the effective date for the other two clarifications also as July 12, 2012. Given that these amendments will not require institutions to take any action or incur any cost, the Board believes this date is appropriate.

IV. Competitive Impact Analysis

As a matter of policy, the Board subjects all operational and legal changes that could have a substantial effect on payment system participants to a competitive impact analysis.¹¹ Pursuant to this policy, the Board assesses whether proposed changes “would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to

¹¹ See “The Federal Reserve in the Payments System,” Fed. Res. Reg. Svc. ¶¶ 9-1550, 9-1558 (Apr. 2009).

differing legal powers or constraints or because of a dominant market position of the Federal Reserve deriving from such legal differences.” If as a result of this analysis the Board identifies an adverse effect on the ability to compete, the Board then assesses whether the associated benefits—such as improvements to payment system efficiency or integrity—can be achieved while minimizing the adverse effect on competition.

The final amendments that eliminate the use of as-of adjustments require Reserve Banks to pay compensation in the form of explicit interest under UCC Article 4A-506, as is required of private sector service providers. The final amendments to section 210.4, clarifying the status of the Administrative Reserve Bank of a sender of a check, does not affect the competitive position of the Reserve Banks vis-à-vis private-sector service providers. With respect to the final amendments to section 210.25 (clarifying the applicability of Regulation J to remittance transfers as defined in the Electronic Fund Transfer Act), private-sector funds transfer systems may have the ability to adopt clearing-house rules that will vary the Uniform Commercial Code, although the extent to which this variation may occur remains unclear. Nevertheless, the Board does not believe this difference in certainty with respect to a small subset of funds transfers will have a material adverse effect on the ability of other service providers to compete with the Reserve Banks. Therefore, as noted in the proposal, the Board does not believe the amendments to Regulation J will have any direct and material adverse effect on the ability of other service providers to compete with the Reserve Banks.

V. Final Regulatory Flexibility Analysis

Congress enacted the Regulatory Flexibility Act (the “RFA”) (5 U.S.C. 601 et seq.) to address concerns related to the effects of agency rules on small entities and the

Board is sensitive to the impact its rules may impose on small entities. The RFA requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Board reviewed the proposed regulation. In this case, the rule applies to all depository institutions. Based on current information, the Board believes that the rule would not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). Nonetheless, the Board prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 in order for the Board to solicit comment on the potential impact of the proposed rule on small entities. The Board received no comments on its request.

1. Statement of the need for, objectives of, and legal basis for, the final rule. The final amendments to Regulation J eliminate references to “as-of adjustments” consistent with the Board’s amendments to Regulation D (12 CFR Part 204), which simplify reserves administration. The amendments also clarify that an institution’s Administrative Reserve Bank is deemed to have accepted deposit of a check or other item even if the institution sends the item directly to another Federal Reserve Bank. The amendments further clarify that Regulation J continues to apply to a Fedwire funds transfer even if the funds transfer also meets the definition of “remittance transfer” under the Electronic Fund Transfer Act. The amendments also make conforming changes to terminology.

2. Summary of significant issues raised by public comment on the Board’s initial

analysis of issues, and a statement of any changes made as a result. The Board did not receive any public comments on the proposed rule addressing matters relating to the Board's initial regulatory flexibility analysis.

3. *Small entities affected by the final rule.* The rule affects all institutions that use Federal Reserve Bank check or wire transfer services. Pursuant to regulations issued by the Small Business Administration (the "SBA") (13 CFR 121.201), a "small banking organization" includes a depository institution with \$175 million or less in total assets. Based on data reported as of December 31, 2011, the Board believes that there are approximately 10,313 small depository institutions, approximately 2,754 of which have a master account with a Federal Reserve Bank.

4. *Record keeping, reporting, and other compliance requirements.* The final rule eliminates references to as-of adjustments and replaces the use of as-of adjustments with direct compensation based on the federal funds rate. As noted above, a depository institution should not be harmed by this amendment because the depository institution will continue to be compensated for the income effects of a transaction error; the payment will simply be in the form of direct compensation instead of an as-of adjustment. The other amendments to Regulation J are clarifications and do not impose new requirements on depository institutions.

5. *Identification of duplicative, overlapping, or conflicting Federal rules.* The Board has not identified any Federal rules that duplicate, overlap, or conflict with the rule. The Board's final clarification to § 210.25 that relates to Article 4A of the UCC actually avoids a potential conflict that might arise by operation of the EFTA and Regulation E.

6. *Significant alternatives to the proposed rule.* The Board is unaware of any significant alternatives to the rule that accomplish the stated objectives of the Board. Commenters did not suggest any alternatives that would minimize the impact of the rule on small entities.

VI. Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). No collections of information pursuant to the PRA are contained in the final rule. The Board received no comments on this analysis.

List of Subjects in 12 CFR Part 210

Banks, banking, Federal Reserve System.

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending Regulation J, 12 CFR part 210, as follows:

PART 210—COLLECTION OF CHECKS AND OTHER ITEMS BY FEDERAL RESERVE BANKS AND FUNDS TRANSFERS THROUGH FEDWIRE (REGULATION J)

1. The authority citation for part 210 continues to read as follows:

Authority: 12 U.S.C. 248(i), (j), and (o), 342, 360, 464, 4001–4010, and 5001–5018.

2. In § 210.2, paragraph (a) is revised to read as follows:

§ 210.2 Definitions.

* * * * *

(a) Account means an account on the books of a Federal Reserve Bank. A subaccount is an informational record of a subset of transactions that affect an account and is not a separate account.

* * * * *

3. In § 210.3, paragraph (a) is revised to read as follows:

§ 210.3 General provisions.

(a) General. Each Reserve Bank shall receive and handle items in accordance with this subpart, and shall issue operating circulars governing the details of its handling of items and other matters deemed appropriate by the Reserve Bank. The circulars may, among other things, classify cash items and noncash items, require separate sorts and letters, provide different closing times for the receipt of different classes or types of items, provide for instructions by an administrative Reserve Bank to other Reserve Banks, set forth terms of services, and establish procedures for adjustments on a Reserve Bank's books, including amounts, waiver of expenses, and payment of compensation.

* * * * *

4. Section 210.4 is revised to read as follows:

§ 210.4 Sending items to Reserve Banks.

(a) Sending of items. A sender, other than a Reserve Bank, may send any item to any Reserve Bank, whether or not the item is payable within the Reserve Bank's District, unless the sender's administrative Reserve Bank directs the sender to send the item to a specific Reserve Bank.

(b) Handling of items. (1) The following parties, in the following order, are deemed to have handled an item that is sent to a Reserve Bank for collection:

(i) The initial sender;

(ii) The initial sender's administrative Reserve Bank (which is deemed to have accepted deposit of the item from the initial sender);

(iii) The Reserve Bank that receives the item from the initial sender (if different from the initial sender's administrative Reserve Bank); and

(iv) Another Reserve Bank, if any, that receives the item from a Reserve Bank.

(2) A Reserve Bank that is not described in paragraph (b)(1) of this section is not a person that handles an item and is not a collecting bank with respect to an item.

(3) The identity and order of the parties under paragraph (b)(1) of this section determine the relationships and the rights and liabilities of the parties under this subpart, part 229 of this chapter (Regulation CC), section 13(1) and section 16(13) of the Federal Reserve Act, and the Uniform Commercial Code. An initial sender's administrative Reserve Bank

that is deemed to accept an item for deposit or handle an item is also deemed to be a sender with respect to that item. The Reserve Banks that are deemed to handle an item are deemed to be agents or subagents of the owner of the item, as provided in section 210.6(a) of this subpart.

(c) Checks received at par. The Reserve Banks shall receive cash items and other checks at par.

5. In § 210.10, paragraph (a) is revised to read as follows:

§ 210.10 Time schedule and availability of credits for cash items and returned checks.

(a) Each Reserve Bank shall include in its operating circulars a time schedule for each of its offices indicating when the amount of any cash item or returned check received by it is counted toward the balance maintained to satisfy a reserve balance requirement for purposes of part 204 of this chapter (Regulation D) and becomes available for use by the sender or paying or returning bank. The Reserve Bank that holds the settlement account shall give either immediate or deferred credit to a sender, a paying bank, or a returning bank (other than a foreign correspondent) in accordance with the time schedule of the receiving Reserve Bank. A Reserve Bank ordinarily gives credit to a foreign correspondent only when the Reserve Bank receives payment of the item in actually and finally collected funds, but, in its discretion, a Reserve Bank may give immediate or deferred credit in accordance with its time schedule.

* * * * *

6. Section 210.11 is revised to read as follows:

§ 210.11 Availability of proceeds of noncash items; time schedule.

(a) Availability of credit. A Reserve Bank shall give credit to the sender for the proceeds of a noncash item when it receives payment in actually and finally collected funds (or advice from another Reserve Bank of such payment to it). The amount of the item is counted toward the balance maintained to satisfy a reserve balance requirement for purposes of part 204 of this chapter (Regulation D) and becomes available for use by the sender when the Reserve Bank receives the payment or advice, except as provided in paragraph (b) of this section.

(b) Time schedule. A Reserve Bank may give credit for the proceeds of a noncash item subject to payment in actually and finally collected funds in accordance with a time schedule included in its operating circulars. The time schedule shall indicate when the proceeds of the noncash item will be counted toward the balance maintained to satisfy a reserve balance requirement for purposes of part 204 of this chapter (Regulation D) and become available for use by the sender. A Reserve Bank may, however, refuse at any time to permit the use of credit given by it for a noncash item for which the Reserve Bank has not yet received payment in actually and finally collected funds.

(c) Handling of payment. If a Reserve Bank receives, in payment for a noncash item, a bank draft of other form of payment that it elects to handle as a noncash item, the Reserve Bank shall neither count the proceeds toward the balance maintained to satisfy a reserve balance requirement for purposes of part 204 of this chapter (Regulation D) nor make the

proceeds available for use until it receives payment in actually and finally collected funds.

7. In § 210.25, paragraphs (b)(1) and (b)(3) are revised to read as follows:

§ 210.25 Authority, purpose, and scope.

* * * * *

(b) * * *

(1) This subpart incorporates the provisions of article 4A set forth in appendix B to this subpart. In the event of an inconsistency between the provisions of the sections of this subpart and appendix B to this subpart, the provisions of the sections of this subpart shall prevail. In the event of an inconsistency between the provisions this subpart and section 919 of the Electronic Fund Transfer Act, section 919 of the Electronic Fund Transfer Act shall prevail.

* * * * *

(3) This subpart governs a funds transfer that is sent through Fedwire, as provided in paragraph (b)(2) of this section, even though a portion of the funds transfer is governed by the Electronic Fund Transfer Act, but the portion of such funds transfer that is governed by the Electronic Fund Transfer Act (other than section 919 governing remittance transfers) is not governed by this subpart.

* * * * *

8. In § 210.26, paragraph (b) is removed and reserved.

9. In §210.32, paragraphs (b)(1) and (b)(2) are revised to read as follows:

§ 210.32 Federal Reserve Bank liability; payment of interest.

* * * * *

(b) * * *

(1) A Federal Reserve Bank shall satisfy its obligation, or that of another Federal Reserve Bank, to pay compensation in the form of interest under article 4A by paying compensation in the form of interest to its sender, its receiving bank, its beneficiary, or another party to the funds transfer that is entitled to such payment, in an amount that is calculated in accordance with section 4A-506 of article 4A.

(2) If the sender or receiving bank that is the recipient of interest payment is not the party entitled to compensation under article 4A, the sender or receiving bank shall pass through the benefit of the interest payment by making an interest payment, as of the day the interest payment is effected, to the party entitled to compensation. The interest payment that is made to the party entitled to compensation shall not be less than the value of the interest payment that was provided by the Federal Reserve Bank to the sender or receiving bank. The party entitled to compensation may agree to accept compensation in a form other than a direct interest payment, provided that such an alternative form of compensation is not less than the value of the interest payment that otherwise would be made.

* * * * *

10. In appendix A to subpart B:

a. In *Section 210.25*, paragraph (b) is revised.

b. In *Section 210.26*, paragraph (i) is revised.

c. In *Section 210.32*, paragraph (b) is revised.

The revisions read as follows:

Appendix A to Subpart B of Part 210—Commentary

* * * * *

Section 210.25—Authority, Purpose, and Scope

* * * * *

(b) *Scope.* (1) Subpart B of this part incorporates the provisions of article 4A set forth in appendix B of this part. The provisions set forth expressly in the sections of subpart B of this part supersede or preempt any inconsistent provisions of article 4A as set forth in appendix B of this part or as enacted in any state. The official comments to article 4A are not incorporated in subpart B of this part or this commentary to subpart B of this part, but the official comments may be useful in interpreting article 4A. Because section 4A-105 refers to other provisions of the Uniform Commercial Code, e.g., definitions in article 1 of the UCC, these other provisions of the UCC, as approved by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, from time to time, are also incorporated in subpart B of this part. Subpart B of this part applies to any party to a Fedwire funds transfer that is in privity with a Federal Reserve Bank. These parties include a sender (bank or nonbank) that sends a payment order directly to a Federal Reserve Bank, a receiving bank that receives a payment order

directly from a Federal Reserve Bank, and a beneficiary that receives credit to an account that it uses or maintains at a Federal Reserve Bank for a payment order sent to a Federal Reserve Bank. Other parties to a funds transfer are covered by this subpart to the same extent that this subpart would apply to them if this subpart were a “funds-transfer system rule” under article 4A that selected subpart B of this part as the governing law.

(2) The scope of the applicability of a funds-transfer system rule under article 4A is specified in section 4A-501(b), and the scope of the choice of law provision is specified in section 4A-507(c). Under section 4A-507(c), a choice of law provision is binding on the participants in a funds-transfer system and certain other parties having notice that the funds-transfer system might be used for the funds transfer and of the choice of law provision. The Uniform Commercial Code provides that a person has notice when the person has actual knowledge, receives notification, or has reason to know from all the facts and circumstances known to the person at the time in question. (See UCC § 1-201(25).) However, under sections 4A-507(b) and 4A-507(d), a choice of law by agreement of the parties takes precedence over a choice of law made by funds-transfer system rule

(3) If originators, receiving banks, and beneficiaries that are not in privity with a Federal Reserve Bank have the notice contemplated by Section 4A-507(c) or if those parties agree to be bound by subpart B of this part, subpart B of this part generally would apply to payment orders between those remote parties, including participants in other funds-transfer systems. For example, a funds transfer may be sent from an originator's bank through a funds-transfer system other than Fedwire to a receiving bank which, in turn, sends a payment order through Fedwire to execute the funds transfer. Similarly, a

Federal Reserve Bank may execute a payment order through Fedwire to a receiving bank that sends it through a funds-transfer system other than Fedwire to a beneficiary's bank. In the first example, if the originator's bank has notice that Fedwire may be used to effect part of the funds transfer, the sending of the payment order through the other funds-transfer system to the receiving bank will be governed by subpart B of this part unless the parties to the payment order have agreed otherwise. In the second example, if the beneficiary's bank has notice that Fedwire may be used to effect part of the funds transfer, the sending of the payment order to the beneficiary's bank through the other funds-transfer system will be governed by subpart B of this part unless the parties have agreed otherwise. In both cases, the other funds-transfer system's rules would also apply to, at a minimum, the portion of these funds transfers going through that funds transfer system. Because subpart B of this part is federal law, to the extent of any inconsistency, subpart B of this part will take precedence over any funds-transfer system rule applicable to the remote sender or receiving bank or to a Federal Reserve Bank. If remote parties to a funds transfer, a portion of which is sent through Fedwire, have expressly selected by agreement a law other than subpart B of this part under section 4A-507(b), subpart B of this part would not take precedence over the choice of law made by the agreement even though the remote parties had notice that Fedwire may be used and of the governing law. (See 4A-507(d).) In addition, subpart B of this part would not apply to a funds transfer sent through another funds-transfer system where no Federal Reserve Bank handles the funds transfer, even though settlement for the funds transfer is made by means of a separate net settlement or funds transfer through Fedwire.

(4) Under section 4A-108, article 4A does not apply to a funds transfer, any part of which is governed by the Electronic Fund Transfer Act (EFTA) (15 USC 1693 et seq.). In general, Fedwire funds transfers to or from consumer accounts are exempt from the EFTA and Regulation E (12 CFR part 205). A funds transfer from a consumer originator or a funds transfer to a consumer beneficiary could be carried out in part through Fedwire and in part through an automated clearinghouse or other means that is subject to the EFTA or Regulation E. In these cases, subpart B would not govern the portion of the funds transfer that is governed by the EFTA or Regulation E. (See the commentary to section 210.26(i) in this appendix, “Payment Order”.)

(5) Section 919 of the EFTA, however, governs “remittance transfers,” which may include Fedwire funds transfers. Section 919 of the EFTA sets out the obligations of remittance transfer providers with respect to consumer senders of remittance transfers. Section 919 of the EFTA generally does not affect the rights and obligations of financial institutions involved in a remittance transfer. To the extent that a Fedwire funds transfer is a “remittance transfer” governed by section 919 of the EFTA, it continues to be governed by subpart B, except that, in the event of an inconsistency between the provisions of subpart B and section 919 of the EFTA, section 919 of the EFTA shall prevail. For example, a consumer may initiate a remittance transfer governed by EFTA section 919 from the consumer’s account at a depository institution, and the depository institution may initiate that transfer by sending a payment order to a Reserve Bank through the Fedwire funds system. If the consumer subsequently exercised the right to cancel the remittance transfer and obtain a refund under the terms of EFTA section 919, the depository institution would be required to comply with section 919 even if the

institution does not have a right to reverse the payment order sent to the Reserve Bank under subpart B.

(6) Finally, section 4A-404(a) provides that a beneficiary's bank is obliged to pay the amount of a payment order to the beneficiary on the payment date unless acceptance of the payment order occurs on the payment date after the close of the funds-transfer business day of the bank. The Expedited Funds Availability Act provides that funds received by a bank by wire transfer shall be available for withdrawal not later than the banking day after the business day on which such funds are received (12 USC 4002(a)). That act also preempts any provision of state law that was not effective on September 1, 1989, that is inconsistent with that act or its implementing Regulation CC (12 CFR 229). Accordingly, the Expedited Funds Availability Act and Regulation CC may preempt section 4A-404(a) as enacted in any state. In order to ensure that section 4A-404(a), or other provisions of article 4A, as incorporated in subpart B of this part, do not take precedence over provisions of the Expedited Funds Availability Act, this section provides that where subpart B of this part establishes rights or obligations that are also governed by the Expedited Funds Availability Act or Regulation CC, the Expedited Funds Availability Act or Regulation CC provision shall apply and subpart B of this part shall not apply.

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Section 210.26—Definitions

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(i) *Payment Order.* (1) The definition of “payment order” in subpart B of this part differs from the section 4A-103(a)(1) definition. The subpart B definition clarifies that, for the purposes of subpart B of this part, automated clearinghouse transfers and certain messages that are transmitted through Fedwire are not payment orders. Federal Reserve Banks and banks participating in Fedwire send various types of messages relating to payment orders or to other matters, through Fedwire, that are not intended to be payment orders. Under the subpart B definition, these messages, and messages involved with automated clearinghouse transfers, are not “payment orders” and therefore are not governed by this subpart. The operating circulars of the Federal Reserve Banks specify those messages that may be transmitted through Fedwire but that are not payment orders.

(2) In some cases, messages sent through Fedwire, such as certain requests for credit transfer, may be payment orders under article 4A, but are not treated as payment orders under subpart B because they are not an instruction to a Federal Reserve Bank to pay money.

(3) This subpart and article 4A govern a payment order even though the originator's or beneficiary's account may be a consumer account established primarily for personal, family, or household purposes. Under section 4A-108, article 4A does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act. That act, and Regulation E (12 CFR part 205) implementing it, do not apply to funds transfers through Fedwire (see 15 USC 1693a(6)(B) and 12 CFR 205.3(b)), except that section 919 of the Electronic Fund Transfer Act may govern a Fedwire funds transfer that is a “remittance transfer.” Such remittance transfers that are Fedwire funds transfers continue to be governed by this subpart. Thus, this subpart applies to all funds transfers

through Fedwire even though some such transfers involve originators or beneficiaries that are consumers. (See also § 210.25(b) and accompanying commentary.)

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Section 210.32—Federal Reserve Bank Liability; Payment of Interest

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(b) *Payment of interest.* (1) Under article 4A, a Federal Reserve Bank may be required to pay compensation in the form of interest to another party in connection with its handling of a funds transfer. For example, payment of compensation in the form of interest is required in certain situations pursuant to sections 4A-204 (relating to refund of payment and duty of customer to report with respect to unauthorized payment order), 4A-209 (relating to acceptance of payment order), 4A-210 (relating to rejection of payment order), 4A-304 (relating to duty of sender to report erroneously executed payment order), 4A-305 (relating to liability for late or improper execution or failure to execute a payment order), 4A-402 (relating to obligation of sender to pay receiving bank), and 4A-404 (relating to obligation of beneficiary's bank to pay and give notice to beneficiary). Under section 4A-506(a), the amount of such interest may be determined by agreement between the sender and receiving bank or by funds-transfer system rule. If there is no such agreement, under section 4A-506(b), the amount of interest is based on the federal funds rate. Section 210.32(b) requires Federal Reserve Banks to provide compensation through an explicit interest payment.

(2) Interest would be calculated in accordance with the procedures specified in section 4A-506(b). Similarly, compensation in the form of explicit interest will be paid to

government senders, receiving banks, or beneficiaries described in § 210.25(d) if they are entitled to interest under this subpart. A Federal Reserve Bank may also, in its discretion, pay explicit interest directly to a remote party to a Fedwire funds transfer that is entitled to interest, rather than providing compensation to its direct sender or receiving bank.

(3) If a bank that received an explicit interest payment is not the party entitled to interest compensation under article 4A, the bank must pass the benefit of the explicit interest payment made to it to the party that is entitled to compensation in the form of interest from a Federal Reserve Bank. The benefit may be passed on either in the form of a direct payment of interest or in the form of a compensating balance, if the party entitled to interest agrees to accept the other form of compensation, and the value of the compensating balance is at least equivalent to the value of the explicit interest that otherwise would have been provided.

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By order of the Board of Governors of the Federal Reserve System, April 5, 2012.

Robert deV. Frierson,
Deputy Secretary of the Board.

BILLING CODE: 6210-01-P

[FR Doc. 2012-8563 Filed 04/11/2012 at 8:45 am; Publication Date: 04/12/2012]